

## REMARKS

Reconsideration and allowance are respectfully requested.

Claims 1-27 and 36-37 are pending. Claims 17-27 and 36 read on the elected invention. Although nonelected claims 1-16 and 37 are withdrawn from consideration by the Examiner, Applicants request their rejoinder after allowance of the elected invention.

The amendments are fully supported by the original disclosure and, thus, no new matter is added by their entry. Typographical errors in claim 13 are corrected. In claims 1 and 17-18, the depolymerized-LMW-epiK5-N,O-sulfate contains at least 40% 3-O-sulfate groups in its glucosamine units. New claims 36-37 require that the intermediate depolymerized-LMW-epiK5-amine-O-oversulfate contains from 50%-80% 3-O-sulfate groups in the glucosamine units. These amendments are supported, inter alia, at page 18, lines 25-26, of the specification (i.e., “R is at least 40%, advantageously 50%-80%”).

### *Information Disclosure Statement*

To satisfy their continuing duties of candor and good faith, Applicants bring to the Examiner’s attention the subject matter in related applications, Serial Nos. 09/738,879, 09/950,003, 10/240,606, 10/274,706, 10/484,883, 10/496,037, 10/518,229, 10/518,302, 10/518,303, 10/868,359, 10/902,285, 11/030,156, 11/440,749, 12/120,167 and 12/198,426.

The Examiner is invited to consider their prosecution histories and the prior art of record in those applications, which are accessible through Image File Wrapper (IFW), in view of the Court’s holding in *McKesson Information Solutions v. Bridge Medical*, 82 USPQ2d 1865 (Fed. Cir. 2007). To avoid duplication of those materials in the PTO’s records, reference to the IFW is encouraged but Applicants would be ready to submit copies of these materials for the Examiner’s review if she prefers.

### *35 U.S.C. 103 – Nonobviousness*

A claimed invention is unpatentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. *In re Kahn*, 78 USPQ2d

1329, 1334 (Fed. Cir. 2006) citing *Graham v. John Deere*, 148 USPQ 459 (1966). An inquiry is required as to “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *KSR Int’l v. Teleflex*, 82 USPQ2d 1385, 1396 (2007). Finally, a determination of prima facie obviousness requires a reasonable expectation of success. See *In re Rinehart*, 189 USPQ 143, 148 (C.C.P.A. 1976).

Claims 17-21, 23-25 and 27 were rejected under Section 103(a) as allegedly unpatentable over Oreste et al. (WO 02/50125) as evidenced by Jacobsson et al. (Biochem. J. 179:77-87, 1979). Applicants traverse.

The Examiner acknowledged at page 6 of the Office Action that the presence of glucosamine 3-O-sulfate (A 3-OS) groups is responsible for unexpected properties of the claimed composition. But she contends that claims 17-18 were not commensurate in scope with the Applicants’ showing of unexpected results. In response, the present amendments require the depolymerized-LMW-epiK5-N,O-sulfate contains at least 40% 3-O-sulfate groups in its glucosamine units. Accordingly, Applicants submit that their claimed invention shares a nexus with the improvement over the prior art.

Withdrawal of the Section 103 rejection is requested because the claims would not have been obvious to one of ordinary skill in the art when this invention was made.

#### *Conclusion*

Having fully responded to the pending Office Action, Applicants submit that the claims are in condition for allowance and earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if additional information is required.

Respectfully submitted,

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